

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LANESHA WIMBUSH,

Plaintiff,

v.

**FAMILY DOLLAR STORES
OF GEORGIA, LLC,**

Defendant.

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Case No.

JURY DEMANDED

NOTICE OF REMOVAL

Defendant Family Dollar Stores of Georgia, LLC (“Family Dollar”), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby files this Notice of Removal of the above-captioned action from the State Court of Douglas County, State of Georgia, where this action is now pending, to the United States District Court for the Northern District of Georgia, Atlanta Division. As grounds for removal, Family Dollar states as follows:

1. The Plaintiff, Lanesha Wimbush (“Wimbush”), commenced this action in the State Court of Douglas County, Georgia on September 1, 2021 and served copies of the Verified Complaint, summons, and discovery on Family Dollar’s registered agent on September 9, 2021. Therefore, removal is timely.

2. This is a civil action for damages arising out of alleged injuries the Plaintiff sustained in a March 27, 2020 slip-and-fall incident at a Family Dollar store located at 6113 Fairburn Rd, Douglasville, Douglas County, Georgia 30134.

3. The United States District Court for the Northern District of Georgia, Atlanta Division has jurisdiction by reason of diversity of citizenship of the parties. 28 U.S.C. § 1332.

4. This is a suit between citizens of different states. At the time she commenced this action and at all times thereafter, Wimbush was and continues to be a citizen and resident of the State of Georgia.

5. Family Dollar is a Virginia limited liability company with its principal place of business located at 500 Volvo Parkway, Chesapeake, Virginia 23320. Family Dollar's sole member is Family Dollar Stores, Inc., a Delaware corporation. A limited liability company's citizenship is solely determined by the citizenship of its members. *See, Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1220 (11th Cir. 2017). Thus, Family Dollar is not a citizen of Georgia.

6. In this action, Wimbush seeks to recover, at least, "general damages in the amount of forty-eight thousand four hundred and twenty-five dollars and twenty-five-cents (\$48,425.25)." (Compl. ¶ 32).

7. The Plaintiff alleges she "suffered severe injuries that required medical treatment" as "a result of the fall" and "Defendant's negligence." (Compl. ¶¶ 16-17).

8. In addition to claims for past, present, and future medical expenses, Wimbush claims loss of enjoyment of life, attorney's fees and costs, and any and all other elements of damage allowable under the laws of the State of Georgia in her Verified Complaint. (Compl. ¶ 32).

9. On December 30, 2020, Wimbush served a pre-suit settlement demand to Family Dollar in the amount of \$206,369.50. In the demand, Wimbush specifically itemized her special damages as follows:

Medical Expenses:	\$46,399.50+
Physical Pain and Suffering:	\$54,000.00
Emotional Pain and Suffering:	\$55,600.00
Future Pain and Suffering:	\$50,370.00
Total:	\$206,369.50+

(Wimbush's Settlement Demand, attached hereto as **Exhibit A**).

10. Wimbush calculated her physical pain and suffering award based on a \$300 per day basis, her emotional pain and suffering based on a \$200.00 per day basis, and her future pain and suffering on \$3.00 per day basis for the remaining forty-six (46) years of her life as per the Annuity Mortality Table of 1949. *Id.*

11. This Honorable Court has previously held that "settlement offers, though not determinative, may be considered in determining the amount in controversy if the demand was an honest assessment of damages as opposed to mere posturing." *Carrington v. Bausch & Lomb, Inc.*, No. 1:07-CV-128-TCB, 2007 U.S. Dist. LEXIS 105554, at *7 (N.D. Ga. Mar. 8, 2007).

11. Wimbush's pre-suit settlement demand was not mere puffery, but was meticulously generated using prevailing Georgia caselaw and established standards of damages calculations.

12. Wimbush's pre-suit settlement demand alleged "\$46,399.50+" in medical expenses, and in fact, her alleged medical expenses increased in her Verified Complaint by demanding \$48,425.25. (Compl. ¶ 32). This indicates that her settlement demand was an accurate assessment of damages continuing to rise based on her ongoing and future medical treatment.

13. Wimbush has not expressly ruled out the possibility of her damages exceeding \$75,000.00. *See, e.g., Fields v. Chipotle Mexican Grill of Colo.*, No. 1:21-cv-00902-AT, 2021 U.S. Dist. LEXIS 114422, at *3 (N.D. Ga. May 11, 2021) (motion to remand granted where Plaintiff's Complaint specifically requested damages not exceeding \$74,999.00).

14. Taken together, it is more likely than not, based on the Wimbush's description of the alleged damages in the Verified Complaint, including past medical expenses, future medical expenses, pain and suffering, and the pre-suit settlement demand, that the amount in controversy of Wimbush's claim exceeds \$75,000, exclusive of interest and costs. Accordingly, the jurisdictional amount is satisfied in this case.

15. A copy of all pleadings and orders served upon Family Dollar is filed with this Notice and attached hereto as **Exhibit B**.

16. Family Dollar will give written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d).

17. Family Dollar will file a copy of this Notice of Removal with the Clerk of the State Court for Douglas County, Georgia as required by 28 U.S.C. § 1446(d).

WHEREFORE, Family Dollar requests this action proceed in this Court as an action properly removed to it pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

This 1st day of October, 2021.

Respectfully submitted,

CARR ALLISON

By: /s/ Sean W. Martin
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CERTIFICATE OF COMPLAINT

Pursuant to Local Rule 7.1(D), I hereby certify the foregoing document complies with the font and point selections permitted by Local Rule 5.1(B). This document was prepared on a computer using Times New Roman font in 14 point.

This 1st day of October, 2021.

By: /s/ Sean W. Martin
SEAN W. MARTIN, GA BAR #474125

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

N. John Bey, Esq.
Joe Morris III, Esq.
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By: /s/ Sean W. Martin
SEAN W. MARTIN, GA BAR #474125